



Canadian Council for Refugees Conseil canadien pour les réfugiés

Lives in the Balance: Understanding current challenges to the refugee claim process

Canada's refugee determination system has been the subject of recent public commentary, much of it focusing on "abuse" and alleged problems in the system.

The realities of refugees in the system have received less attention.

Refugee determination is complex and challenging. It is not easy to decide who needs protection and who does not.

For refugees, however, there is a simple but compelling need for protection from persecution. For Canadians too, there is at heart a simple challenge: will we ensure that refugees are not sent back to face persecution?

What follows are some answers to current questions and concerns about the system, as well as information about a few of the individuals in the system.

Why is there such a large backlog of refugee claims?

The large backlog of claims in the refugee determination system is caused by the government's failure to appoint sufficient Board members to make decisions.

In recent years, the Immigration and Refugee Board has been significantly short of members, at times lacking as many as a third of its members.

The Auditor General, in her March 2009 report, raised serious concerns over the shortfall and high turnover of Board members. She found that:

The high number of Board member vacancies at the IRB had a significant impact on the Board's capacity to process cases on a timely basis. The inventory of unresolved cases has reached an exceptionally high level.¹

The backlog is causing enormous hardship for refugees who are forced to wait years before receiving protection and being able to get on with their lives in security. Some refugees are separated from immediate family members overseas – during the wait there is no prospect of family reunification, even if their relatives are at risk.

"Allowing a backlog like the present one is an abuse of our refugee system. This will ultimately cost the taxpayer far more than processing the claims in a timely way, and it also ensures that people who are not refugees will remain in Canada for a long time."

- Dr. Catherine Dauvergne, Canada Research Chair in Migration Law, University of British Columbia Faculty of Law

1 Auditor General of Canada, 2009 March Status Report, Chapter 2—The Governor in Council Appointment Process, <http://tinyurl.com/pf897o>

Prasant* has been waiting for almost two years for his refugee claim to be determined – and he still doesn't even know when the hearing will take place. The wait is agonizing because his wife and two children remain in danger in Nepal. Prasant can do nothing to reunite the family in safety until he has been accepted as a refugee.

Prasant was a businessman, social worker and political activist. He describes himself as a human rights defender and proponent of multiparty democracy. He fled Nepal because he was targeted by the Maoists, who tried to force him to join their party and support their activities. When he refused, they attempted to extort from him a huge sum of money which he did not pay, both because he couldn't and because he objected on principle to giving them any support. His family is also at risk and has had to separate as a consequence: his wife is hiding with relatives, his two children are staying in residences attached to their high schools. His daughter is now 18 and finishing high school: Prasant does not know where she can go to live once she graduates. The family survives on money Prasant sends from his work in a factory in Toronto.

Prasant's wife and children keep asking him: "How long?"



Prasant and his family need to keep their identity concealed.

Papi fled to Canada from his home in North-West Africa in 2006, when he was just 17 years old. He spent 27 months, lonely and anxious, waiting for his refugee claim to be heard. He was in constant fear of deportation. He could not pursue his education. His family back home didn't understand.

"My father told me that I must have done something bad in Canada and that was why things were not moving forward for me. He stopped believing me. I felt even lonelier."

Papi was finally accepted as a refugee in 2009.



Papi constantly checked his mail, waiting for news on his refugee claim.

Cindy* was in her mid-twenties when she made a refugee claim in Canada on her arrival in February 2007. She fled Nigeria because her family had discovered that she was gay – they accused her of bringing shame on the family by her sexual orientation and insisted that she submit to a "cleansing" process. Because her father was very influential, she could not find protection elsewhere in Nigeria, a country where homosexuality is illegal.

More than two years later, Cindy is still waiting for her refugee claim to be determined. She had been close to graduating in banking and financing when she fled Nigeria, but she is unable to return to school here until she is accepted as a refugee. Instead she is working for a security company.

Cindy struggled hard to get to Canada and has been working to support herself, finding a job as soon as possible after her arrival. She has fought for herself.

She is still waiting for her hearing after more than two years.

Another factor contributing to the backlog is the recent increase in the number of claims. There are many reasons why more people are making claims, but one reason is the fact that the government has allowed the backlog to develop. When the determination process is slow, there is an incentive for people to make a claim in Canada in order to work here for a few years, even if they expect that their claim will eventually be refused.

Historically, numbers of refugee claims rise and fall. When the numbers rise, the government needs to appoint additional decision-makers in order to avoid a backlog developing. The government has been doing exactly the opposite: creating a backlog by appointing insufficient members.

The system of appointing members through Governor-in-Council appointments has never worked well, because both the quality and timing of appointments are regularly and negatively affected by political considerations. The current system should be replaced by a merit-based, non-political appointment system.

"It's hard to communicate to the general public what refugees go through while waiting for the hearing date or the decision. Many get discouraged along the way and develop signs of depression. Some even speak of having thoughts of suicide. The wait is so stressful that by the day of the hearing many are worn down. They have been going through this unbearable state of waiting, not knowing where they're going, where they'll be."

- Sylvain Thibault, Montreal City Mission

Are claimants abusing Canada's generosity?

Protecting refugees is not a matter of generosity – it is a legal obligation, under international law and the Canadian Charter of Rights and Freedoms. Forty years ago, in 1969, Canada signed the Geneva Convention relating to the Status of Refugees committing the country to respect the basic rights of refugees, including the right not to be sent back to persecution.

Canada, like other countries, often faces challenges in living up to its obligations. Canada cannot control when and how many refugees will need our protection. It is often difficult to determine who needs protection: this is why each claim for protection must be examined carefully and fairly.

Not all claimants need our protection, but this does not mean that they are "abusing" the system. Many claimants found not to be refugees have left behind situations of violence, injustice or deprivation, but are not recognized as refugees because the definition is very narrow. For example, a person can be fleeing a vicious war and still not qualify as a refugee. Or they may be fleeing a situation of extreme poverty related to discrimination. Whatever their reasons, those who make claims are people with few options, since no one who has power and privilege would want to be a refugee claimant – a status that is frequently demeaning and with few rights. To accuse them of "abuse" is to victimize the weak.

What about claimants from Mexico: most are refused so why are there so many?

There are significant numbers of Mexican claimants who have a well-founded fear of persecution, as a result of the high levels of violence linked to organized crime and government corruption. Others are fleeing serious threats of private violence (such as domestic violence) from which the state is unwilling or unable to protect them.

Unfortunately, decision-making is very inconsistent and not all claimants are currently getting a fair hearing. The Immigration and Refugee Board routinely denies claimants protection on the grounds that the Mexican state should be able to protect them. But in many cases the Mexican police and other authorities do not offer protection, either because they are powerless themselves or because they are complicit in the abuse.

The Federal Court of Canada has repeatedly struck down decisions of the Immigration and Refugee Board where claimants were rejected on the basis that the Mexican state could protect them or that they could find safety elsewhere within Mexico.²

If Mexican claimants had access to the appeal on the merits provided for in the law passed by Parliament (but not implemented by the government), more of the unfair negative decisions might be corrected and more Mexican refugees would receive the protection that they need.

2 For example, 2009 FC 262, Canto Rodriguez v. Canada (MCI) (failure to properly consider evidence regarding state protection); 2008 FC 1246, Mejia Ballesteros v. Canada (MCI) (failure to properly consider evidence regarding state protection); 2008 FC 1180, Aguilar v. Canada (MCI) (failure to consider objective evidence regarding Internal Flight Alternative); 2008 FC 1035, Gallo Farias v. Canada (MCI) (findings on state protection too general); 2008 FC 1013, Angeles v. Canada (MCI) (unreasonable conclusion that state protection available).

Although Juan Manuel and his family now have permission to stay in Canada, they still fear identifying themselves publicly.



Juan Manuel* was a Mexican bus driver, who also ran a small business to supplement his income. In 2003, he was robbed in his apartment. He chased after the robber, who, with the help of some neighbours, was caught and handed over to the police. It turned out that the robber was a member of a powerful family that controlled a criminal organization. Juan Manuel soon started receiving threatening calls from the robber's family, but despite this he courageously testified against the robber, who was sentenced to a year and a half in jail.

The threats to Juan Manuel continued (for example, the words "you are dead" were carved into the front door of his apartment). Since the police offered him no protection, he moved with his family to a different region of Mexico. But his harassers tracked down his wife's family and started threatening them in turn, demanding to know Juan Manuel's whereabouts. Eventually the men obtained the information they were looking for by brutally beating Juan Manuel's in-laws.

Juan Manuel decided that he needed to escape the country to save his life. He fled to Canada and made a refugee claim.

In September 2007, the Immigration and Refugee Board rejected the refugee claims of Juan Manuel and his family.

A few months after this rejection, with no other options in Canada, Juan Manuel and his family returned to Mexico in great fear.

Just two weeks later, while Juan Manuel and his wife were walking in the street, a van stopped and two men got out, one of whom Juan Manuel recognized. They immediately started to beat Juan Manuel, trying to get him inside the van. Juan Manuel yelled at his wife to run and tried to prevent himself from being pushed into the van.

His attackers shouted "you're [expletive] dead, you thought we weren't gonna find you".

Fortunately bystanders responded to Juan Manuel's wife's cries for help and shouted that they were calling the police. One of the attackers, a man aged about 25 years, pulled out a knife, stabbed Juan Manuel in the abdomen and fled.

Juan Manuel was taken to hospital, where he underwent 12-hour surgery and stayed in intensive care for 12 days due to the seriousness of and complications from his injuries.

Following his release from hospital, he and his family returned to Canada, where they have been granted permission to stay.



Vicente and his family are waiting for their refugee claim to be heard.

Vicente* and his family fled Mexico to escape threats to their lives.

Vicente worked for a private insurance company, but was also active in politics at the local level. Several years ago, he denounced a case of electoral fraud to the media. This led to repeated threats and harassment by the police, who report to the State Governor.

Despite this, Vicente continued his efforts to represent community interests and to hold elected leaders to their promises. This brought him into confrontation with the mayor, who called Vicente in for a meeting. He warned Vicente against standing in the way of his ambitions to be elected as governor. He threatened Vicente's family: "I will make you and your family disappear, wherever you go I will find you".

Shortly afterwards, the State Governor told Vicente that he was making too much trouble: "If you continue with your ideas, I am sorry, but you have to know what to do because you have a young family".

Vicente sought support from his own party, the Partido Acción Nacional, which has power at the federal level. However, not only did they fail to help him, they actually passed his complaint on to the local authorities he was denouncing. Vicente realized that the various political parties are complicit in maintaining corrupt practices in Mexico.

The mayor who threatened Vicente is believed to have ties to organized crime.

Vicente and his wife have two young children, a girl aged 6 and a boy aged 12.

Victoria* fled Mexico after years of abuse from her ex-partner, Santiago*. He was a lawyer who gained a reputation for defending the poor, but she discovered that he was also involved in some dishonest dealings. Eventually they separated, but Santiago was developing a political career and feared that Victoria might use her knowledge of his affairs to ruin his reputation. Over several years, Victoria and her children were harassed, threatened and assaulted; their house and Victoria's office were vandalized. One of her children was twice hospitalized. Victoria was unable to get any protection from the police or other authorities – they told her that Santiago had too much political power for her complaints to be investigated. The report that she did file "disappeared". After Victoria had left the country, Santiago threatened that he would be waiting for her to come back to kill her.

Victoria and her children have claimed refugee status in Canada. They are waiting for their case to be heard.



Victoria and her children in Canada.

Not all Mexican claimants came to Canada because of a fear of persecution. Some are victims of fraudulent schemes: they paid significant sums to dishonest agents thinking that they were part of a legitimate program for workers. Many of these individuals withdraw their claims when they realize the truth (there is a high rate of withdrawal among Mexican claimants). The CCR has been urging the government to take action to address cases of fraud in the country of origin.

Petra* is a 22-year-old woman who fled to Canada in November 2007, following a brutal attack by skinheads that left her hospitalized.

As a Roma, Petra had been subjected to discrimination and verbal abuse throughout her childhood. She was called names such as “black” and “dirty gypsy”. Non-Roma children would not sit next to her for fear of catching some “gypsy disease”. The teachers did nothing to protect the Roma children. Outside school too, Petra and her Roma friends constantly faced discrimination: for example, they would often be turned away from discotheques or restaurants.

One day, Petra and another Roma woman were attacked on their way home from work. A group of skinheads swore at them and then hit them, knocking them down to the ground where they kicked them until they were unconscious. They woke up in the hospital, Petra with concussion. The other woman had damage to her uterus. When they reported the attack to the police, the police refused to investigate, saying that the Roma women could not provide sufficiently clear descriptions of their attackers or their actual names.

Petra came to Canada hoping to be able to live without fear for her life.



A group of Roma at a community event in Toronto.

3 “Roma face discrimination, attacks in Czech Republic”, by Peter O’Neil, Canwest News Service

8 May 2009, <http://tinyurl.com/obayyh>

4 “Canada flooded with Czech Roma refugee claims”, by Peter O’Neil, Canwest News Service, 15 April 2009, <http://tinyurl.com/dfacyk>

5 This point was made in a letter to Minister Kenney signed by a number of groups, including the European Roma Rights Centre, 4 May 2009, <http://www.errc.org/db/03/D4/m00003D4.pdf>

What about claimants from the Czech Republic – are they false refugee claimants?

Most of the claimants from the Czech Republic are Roma, a minority group subject to well-documented harassment, racist attacks and societal discrimination. In 2008, 43% of claimants from the Czech Republic were determined to be refugees. The positive decisions reflect the country information that clearly documents human rights abuses against the Roma.

Some Roma claimants are refused because they are determined to be fleeing discrimination, rather than persecution. It is unfair to call them “false” claimants simply because the harm they are fleeing is bad but not quite severe enough for them to meet the narrow definition of a refugee.

“The Roma, once known as Gypsies, describe living conditions that might fit the image of the Southern U.S. during racial segregation. They say they face a constant threat of neo-Nazi attacks and hateful demonstrations, where marchers head into Roma communities and call them ‘parasites’.”³

– Peter O’Neil, Canwest News Service

The Minister of Citizenship and Immigration has recently been quoted expressing concerns about “false refugee claimants” from the Czech Republic.⁴ It is inappropriate for a minister to comment on who is a refugee, since refugee determination is the task of the Immigration and Refugee Board, an independent quasi-judicial tribunal. Since the Minister recommends to Cabinet which members should be reappointed at the end of their term, such comments may influence Board members deciding Czech claims, especially those approaching the end of their term.

The Minister’s comments also send the wrong message to the Czech Republic, which should be encouraged to act more firmly to protect the rights of its Roma citizens, rather than urged to prevent persecuted Roma from fleeing the country.⁵

“Under international law, asylum claims must be determined individually. We cannot say that Czech Roma in Canada collectively have a well-founded fear of persecution, just as it is inappropriate for Canadian officials to assert that they do not have a well-founded fear. What we can say is that in the Czech Republic, systemic discrimination and exclusion remain the reality for Roma: systemic segregation of Romani children in schools and housing, poor school completion rates, discrimination in employment and massive unemployment, to name just a few examples. Moreover, there has been an increase in the visibility and activity of extremist groups in the Czech Republic, creating a real threat of violence against Romani people. Finally, there is also a lack of political will at all levels in the Czech Republic to address these issues of discrimination and exclusion.”

– Rob Kushen, Managing Director, European Roma Rights Centre

Amnesty International continues to receive reports on forced evictions, segregation in education and racially motivated violence against the Roma community in the Czech Republic. As recently as 2006, it was noted by the Committee on the Elimination of Racial Discrimination that Roma women have been subjected to sterilization procedures without their full and informed consent, a violation that the Czech government did not take sufficient action to impede. Moreover, the Roma community has been denied justice when seeking redress for abuses against them.

The documented information by human rights organizations and UN Committees make it clear that the Roma in the Czech Republic continue to suffer discrimination at the hands of both public officials and private individuals and that there are individuals who require protection.

Amnesty International has noted an increase in extremism targeted at Roma in the Czech Republic, and has called on the Czech authorities to comply with their national and international obligations to ensure that the Roma enjoy their rights, and to stand up to growing extremism.

In light of the continued discrimination against the Roma community, Amnesty International is very concerned with Minister Kenney's comments, which call into question the legitimacy of all refugee claims arriving from the Czech Republic. These comments essentially prejudice asylum claims. This goes against international refugee law, which requires that every asylum claim must be determined on its individual merits. It is simply unacceptable to prejudice asylum claims, or to presume that one type of refugee is inherently more deserving than another.

– Gloria Nafziger, Amnesty International Canada

Why should Canada hear claims from countries with liberal democracies?

Canada has legal obligations to all refugees, whatever the country of origin. Of course, in some countries citizens can find protection against persecution – this is recognized in Canada's refugee determination system which presumes that state protection is

Stefan* and Ivana* fled the Czech Republic with their young daughter, following years of abuse suffered because they are Roma.

Stefan has been physically attacked numerous times, leading to him being hospitalized more than once. His leg is crooked as a result of a brick thrown at him. On another occasion, he was beaten by skinheads with a baseball bat. He woke up in a hospital with concussion. He has been assaulted in front of his daughter. The attacks were regularly accompanied by racist abuse. Even though Stefan reported the attacks, the police never attempted to find the assailants nor made any effort to protect Stefan.

Stefan had difficulty finding work: employment agencies regularly refuse to hire Roma.

Ivana was forcibly sterilized, without her informed consent, about five years ago. She had complained of some pain in her abdomen during a medical check-up. The hospital told her she needed surgery to stop the pain. The next morning, the doctors informed her that her uterus had been removed during the surgery and she can no longer have children.

Their daughter was attacked at school by fellow pupils. The teacher did nothing to intervene and the girls threatened to beat her up again if they had the opportunity.



Credit: Wikipedia commons/Anglos

Many Roma children in the Czech Republic, like Stefan and Ivana's daughter and those pictured, face discrimination.

available in countries that are fully developed democracies. However, it is not a simple matter to identify which countries can protect their citizens, and there may be changes over time and exceptions to the general rule.

Furthermore, formally labelling some countries in this way risks causing diplomatic offence to countries that are not so labelled. It is an inconvenient truth that good trading partners can still be the source of serious human rights abuses.

Does Canada's refugee determination system need to be reformed?

The core of Canada's refugee determination system is excellent and does not need to be reformed: a first level determination made through a hearing by an independent quasi-judicial tribunal. It is this strong core that has made Canada's system a model internationally.

To make this system work well the government needs to appoint qualified members in sufficient numbers and implement the law as approved by Parliament, giving claimants access to the appeal.

There are certainly other improvements that could be made to the overall system to make it fairer, simpler and more efficient. However, the core elements should not be changed.

*"There are no quick fixes in the refugee business. It is a difficult and serious job deciding who has a legitimate fear of persecution and who does not. It requires independent and qualified decision makers and an effective appeal system to catch inevitable mistakes. Just and reliable decisions provide a solid foundation for the prompt removal of undeserving claimants. A quick fix system of hasty and shoddy decisions leads to endless judicial reviews, blatant injustice and ultimately, more delay."*⁶

– Peter Showler, Director, Refugee Forum (University of Ottawa), former chairperson of the Immigration and Refugee Board

6 No quick fix for refugees, Peter Showler, The Ottawa Citizen, 15 May 2009, <http://tinyurl.com/oynrhk>

7 Does every child matter? Children seeking asylum in Britain, Report by Refugee and Migrant Justice, 10 March 2009, <http://refugee-migrant-justice.org.uk>. The report found that children face a "hostile legal process" and are regularly locked up and left without adult support.

Should we imitate measures used by European countries who have succeeded in reducing the numbers of claims?

European countries have introduced numerous measures that bar or deter claimants, whether or not they are refugees. As a result, many refugees have been wrongly refused protection and are destitute, detained or deported.

For example, the UK has seen the numbers of claims go down, but there has been an accompanying increase in reports of refugees' rights being abused, including asylum-seeking children "denied fundamental protections"⁷ and women subject to sexual violence in the UK as a result of destitution.⁸ The UK has changed its asylum system four times in seven years, spending enormous amounts of money – and they still do not have a system that produces fair and consistent refugee decisions.

Don't claimants cost us a lot of money?

Many refugees arrive with very little and it does cost money to adjudicate their claim. However, refugee claimants also contribute to the Canadian economy: it is unfair to consider only the costs, and not the benefits. A significant proportion of claimants work and pay the same taxes as Canadians, even though they are not eligible for all the benefits Canadians are entitled to.⁹ Over the longer term, once established in Canada, refugees, like other immigrants, make great contributions to Canada's economy, culture and history.

8 "Refugee Council response to asylum statistics out today", UK Refugee Council, Press release, 24 February 2009, <http://www.refugeecouncil.org.uk/news/press/2009/february/20090224.htm>

9 For example, refugee claimants are not entitled to provincial health care coverage (only emergency health care under the Interim Federal Health Program) nor to child tax benefits. There are many other services and benefits not enjoyed by refugee claimants, even though their taxes are contributing towards them.



WANT TO KNOW MORE?

Visit the CCR's website: www.ccrweb.ca

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